HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT APPEAL NO. 826 OF 2006

BETWEEN

S. Ramadevi

.....

Appellant

And

A.P. State Road Transport Corporation
Rep. by its Regional Manager,
Khammam & another

.....Respondents

Counsel for the Appellant : Shri P. Prabhakar Reddy

Counsel for the Respondents : Smt. P. Rajani Reddy

Dated: 07.08.2006

::JUDGMENT::

Per G.S. SINGHVI, CJ

Having failed to persuade the learned Single Judge to entertain her prayer for issue of a direction to Andhra Pradesh State Road Transport Corporation (for short 'the Corporation') to pay Rs.8,85,382-60 Ps. in lieu of arrears of hire charges, appellant Smt. S. Ramadevi has filed this appeal under clause 15 of the Letters Patent.

In furtherance of tender notification dated 23.02.2001 issued by the Corporation inviting applications from private entrepreneurs to make available buses for operation on notified routes, the appellant submitted tender for Khammam to Jaggaiahpet/Vallapuram and Khammam to Tummagudem/Chintapalli routes. The Corporation accepted her offer and allotted those routes to the appellant. Thereafter, the parties entered into agreements dated 23.05.2001 under which, the appellant agreed to allow operation of her buses for a period of three years i.e. from 23.05.2001 to 22.05.2004. The agreement in respect of bus No. AP 24U 4949 was extended by two more years and the one entered in respect of bus No.AP 24U 4546 was extended by one year.

At the end of initial term of agreements, the appellant represented to the Corporation to release balance amount by asserting that even though as per agreements, the coverage distance of bus No. AP 24U 4949 was 330 K.Ms. (8 singles), as a matter of fact, the vehicle was plied at a distance of 390 K.Ms. (10 singles) and bus No. AP 24 U 4546 covered distance of 385 K.Ms. as against agreed distance of 350 K.Ms. She repeated this request vide representation dated 16.05.1995 and then filed writ petition under Article 226 of the Constitution of India.

In paragraphs 4 and 6 of the counter-affidavit filed by her,

Smt. J. Sreelatha, Law Officer, Andhra Pradesh State Road Transport Corporation, Musheerabad, Hyderabad controverted the appellant's assertion regarding excess plying of the vehicles. This is evinced from the two paragraphs of the affidavit of Smt. Sreelatha, which are extracted below:

> " It is submitted that the petitioner entered an agreement with respondent to operate Bus No. AP 24 U 4949 on the route Khammam-Jaggaiahpet/Vallapuram. As per the agreement the bus is being operated only for 330 KMs on route Khammam-Jaggaiahpet/Vallapuram and hire charges are being paid to the petitioner every fortnight accordingly. Route course with number of trips are furnished hereunder:
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> S.No. Route No.of trips KMs. Total KMs.
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> ---
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> 1. Vallapuram 6 24 144
> 2. Mallaram 2 40 80
> 3. Jaggaiahpet 2 53 106
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> It is submitted that in respect of vehicle No. 24 U 4546 belonging to the petitioner the agreement coverage is only 350 KMS. The bus used to operate 6 single trips between Khammam and Thummagudem and two single trips between Khammam and Vallhavi. The bus was under operation till 22.05.2005 and due to the expiry of the agreement period the bus was withdrawn. The bus used to operate 34 KMs initially and subsequently one route trip to Kodumoor with 30 KMs. was conducted due to non-remunerative and uneconomical trips. Thus, the bus used to operate

only 314 KMs and the hire charges have been paid every fortnight based on the mileage/kilometers. The petitioner submitted claim forms on 03.12.2004 to settle the claim and the operation of the bus was stopped on 22.05.2005. The bus No. AP 24 U 4546 used to operate only 314 KMs and all the claims with respect to the kilometers covered were settled. There is no balance amount due to be settled."

The learned Single Judge, after taking note of the rival pleadings, declined the appellant's prayer for issue of a mandamus in terms of the prayer made in the writ petition, but disposed of the same with the following direction:

" However, having regard to the nature of the controversy, to meet the ends of justice, I deem it appropriate to dispose of the writ petition with a direction to the Corporation to hold a joint survey in the presence of the petitioner or her representative with regard to the actual distance operated by the Corporation under the agreements dated 23.05.2001 and, thereafter, to consider the request of the petitioner in terms of the joint survey report. It is also open to the petitioner to produce relevant material, if any, to substantiate her version with regard to the distance concerned, at the time of the joint survey. Such exercise shall be completed as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order."

Learned counsel for the appellant argued that the reasons assigned by the learned Single Judge for not issuing a mandatory direction to the Corporation to pay the amount claimed by the appellant in lieu of excess usage of the buses is legally untenable and the order under challenge is liable to be set aside because in the counter-affidavit filed on behalf of the respondents, the

appellant's assertion regarding excess use of the vehicles was not denied. Learned counsel submitted that even though the claim made by the appellant was for payment of money simplicitor, the learned Single Judge ought to have granted relief by taking into consideration the admitted facts brought on the record of the writ petition.

In our opinion, there is no merit in the argument of the learned counsel. The averments contained in paragraphs 4 and 6 of the affidavit filed by Smt. J. Sreelatha on behalf of the Corporation show that there is a serious dispute between the parties on the issue of actual distance for which the buses of the appellant are said to have been plied. Therefore, the learned Single Judge rightly declined to entertain the appellant's prayer for directing the respondents to pay Rs.8,85,382-60 Ps. and we do not find any valid ground to take a different view.

We are further of the view that the direction given by the learned Single Judge in the concluding part of the order under challenge does substantial justice to the appellant. It will be open to the appellant to produce evidence before the Corporation to substantiate her claim that the buses were used for a longer distance than the one specified in agreements. Even otherwise in terms of Clause 11 of the agreement, the appellant was required to approach the Regional Manager for adjudication of her claim.

With the above observations, the appeal is dismissed.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

07.08.2006

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